IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.389/2006

Reserved on.9.5.2006

Decided on. June 22, 2007

Gabriel Employees Union **…Petitioner.**

Versus

M/s Gabriel India Limited and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes.*

For the petitioner : **Mr. V.D. Khidta, Advocate**

For the respondent No.1 **Mr. Dushyant Dadwal, Advocate.**

For the respondents No.2&3: **Mr. M.S. Chandel, Advocate General with Mr.M.A. Khan Dy. Advocate General.**

Rajiv Sharma, J.

This petition is directed against the order dated 5.4.2006 passed by the appellate authority in appeal No. 86 of 2005.

The brief facts necessary for the adjudication of this petition are that the respondent No.1-company had submitted a draft proposal for the modification of standing orders for certification on 18th June, 2005. The copy of draft proposal for modification of standing orders is at page 74 of the paper book of this petition. Paragraph 29 of the draft standing orders is reproduced below for better appreciation of the facts:

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

"The age of retirement on superannuation of a workman shall be as may be agreed upon between the Management and the Workman through a contract or as specified in a settlement or award of both the workmen and the management. The employee shall automatically retire from the service of the Company on attaining the age as provided herein before to be calculated in accordance with the date of birth given by him at the time of appointment and as appearing in the Company's record.

The Management may at the discretion extend the services of any employee for a period not exceeding one year at a time subject to a maximum of three years."

In sequel to the draft standing orders submitted by respondent No.-1 Company, the Joint Labour Commissioner-cum-Certifying Officer i.e. respondent No.2 had sent letter to the petitioner-union dated 4th July, 2005. The petitioner-union had filed detailed objections to the draft standing orders of modification of standing orders and had made the following averments to para 29 of the draft proposal:

"That the clause 29 of the proposed Standing orders is regarding the age of the superannuation/retirement but in this clause the Company has not mentioned the age of retirement whereas it is mandatory and necessary for the Company to mention the age of retirement. The company has not intentionally mentioned the age of retirement which clearly shows that the present proposed standing

order submitted by them before this Ld. Authority is nothing but just eye wash and their intention is not to get the dispute settled once for all. It is important to mention here that the worker has submitted the amended standing orders as per the provisions of the Law and the same was certified by this Ld. Authority dated 9.11.1998 whereby the age of retirement has been fixed as 60 years by this Ld. Authority in place of 55 years. The Company went into the appeal the order passed by this Ld. Authority was upheld and thereafter the Company filed CWP No. 263/2003 before the Hon'ble High Court of Himachal Pradesh, however the Company has withdrawn the petition with this prayer they want to submit the draft standing orders with respect to the items contained therein including the item relating to the retirement age of the Employee/Workman with the petitioners. The Hon'ble High Court while allowing the prayer of the Company has made clear that the Company shall include the item relating to the retirement age of the Employees/Workmen working with the Company. However, the Company has not mentioned the age of retirement hence the order passed by this Ld. Authority earlier stand revised and deemed to be fully operative in all respect. The whole dispute between the Company and the worker is regarding superannuation/retirement age which as per the Industrial Employment (Standing Orders) H.P. Rules, 1973

and amended Rules 1991 is 60 years and same is binding on the Company also. No only this the workers can get the maximum benefit of the Employees Pension Scheme 1995 in case they work till the age of attaining 58 years or more than that. Hence in these circumstances the age of superannuation/retirement must be 60 years as already certified by this Ld. authority."

The respondent-Company had filed counter to the objections filed on behalf of the petitioner-Union. Respondent No.2 vide order dated 29th August, 2005 after hearing the parties had certified that the age of retirement of workmen/employees on attaining the age of superannuation shall be on the completion of 60 years by the workmen/employees in conformity with the provisions of age of retirement as prescribed in sub- item (3) of item No. 10 of Schedule 1-A of Model Standing Orders under rule 3 of the Industrial Employment (Standing Order) Himachal Pradesh Rules, 1973 as amended up to 1991 framed under Industrial Employment (Standing Order) Act, 1946 (hereinafter referred to as the Rules and Act) The respondent No.1 feeling aggrieved by the order dated 29th August, 2005 filed an appeal before the appellate authority prescribed under the Industrial Employment (Standing Order) Act, 1946. The appellate authority had accepted the appeal on 5.4.2006 and set aside the order passed by respondent No.2.

Before considering the rival submissions of the learned counsel appearing on behalf of the parties, it will be apposite if some

relevant provisions of the Act and the Rules are analyzed. Sections 3, 4 and 5 of the Act are reproduced as under:

"3. Submissions of draft standing orders.- (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in this industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

4. Conditions for certification of standing orders.- shall be certifiable under this Act if-

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act;

and it (shall be the function) of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

5. Certification of standing orders.- (1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to tender the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

It is prescribed under Rule 4 of the Rules that an application for certification of standing order shall be made in Form-I. Rule 6 prescribes that as soon as may be after the authority receives the application under Rule 4 in respect of industrial establishment, the Certifying Officer shall where there is a trade union of the workmen, forward a copy of the draft standing orders to the trade union together with a notice in form II and where there is no such trade union, call a meeting of the workmen to elect three representatives, to whom he shall, upon their election, forward a copy of the draft standing orders together with a notice in form-II.

Vide Industrial Employment (Standing Order) Himachal Pradesh Amendment Rules, 1991 after item No.10 of the Schedule of the Industrial Employment (Standing Order) Act, 1946 the following item has been inserted, namely:

“10-A.

(i) Service record-matters relating to service card; token tickets, certification of service; change of residential address of the workers and record of age;

(ii) Confirmation;

(iii) Age of retirement;

(iv) Transfer;

(v) Medical aid in case of accidents;

(vi) Medical examination;

(vii) Secrecy;

(viii) Exclusive Service."

The State has also framed Model Standing Orders governing service record (Schedule 1-A). Para 3 of the same which deals with the age of retirement is reproduced below:

> **"(3) Age of retirement.- The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or a specified in a settlement or award which is binding on both the workman and the employer where there is no such agreed age, retirement of superannuation shall be on completion of 60 years of age by the workman."**

Mr. V.D. Khidta, Advocate appearing on behalf of the petitioner-union had strenuously argued that the order passed by respondent No.2 was in accordance with law and the appellate order dated 5.4.2006 is not sustainable in the eyes of law.

Mr. Dushyant Dadwal, Advocate appearing on behalf of respondent No.1-company had supported the appellate order dated 5.4.2006.

What had been proposed in para 29 of the draft standing orders was that the age of retirement on superannuation of a workman shall be as may be agreed upon between the management and the workmen through a contract or as specified in settlement or award of both the workmen and the management and the employee shall automatically retire from the service of company on attaining the age as provided herein before to be calculated in accordance with the date of birth given by him at the time of appointment as per the company record. One thing is very clear from the bare reading of the draft standing orders that no age of retirement at all had been prescribed. Paragraph 29 of the draft proposal is just verbatim reproduction of para 3 of the Model Standing Orders concerning service record as quoted herein above. What has been stated in para 3 of the Model Standing order is that the age of retirement on superannuation of a workman shall be as may be agreed upon between the employer and workman under an agreement or as specified in a settlement or award which is agreed upon by both the employer and workman. Where no such age is prescribed, it shall be 60 years of completion by the workman. No material has been placed on record by the respondent-Company i.e. Management that at any given time any agreement had been arrived at between the employer and the workmen. Neither any settlement nor award has been placed on record on the basis of which any age had been prescribed for retirement/superannuation. What is the intention of the Model Standing Order is that there has to be some age prescribed in any of the modes mentioned therein and if there is no

date as in the present case, the retirement/superannuation shall be on completion of 60 years of age by the workman.

In view of this position this Court is to see whether the Certifying Officer had passed the order dated 29.8.2005 in accordance with law or not. The respondent No.2 had come to the right conclusion that by not prescribing the age of retirement as required in sub-item (3) of item 10 Schedule 1-A of the Rules and Amendment Rules, 1991, the same was in violation of Clause (A) of section 4 of the Act. Accordingly he had certified the Standing Orders by prescribing the age of retirement on the completion of 60 years by the workmen/employees.

Now, this court has to consider whether the appellate order dated 5.4.2006 is in accordance with law or not. The appellate authority had only considered the phraseology employed in clause 29 of draft standing orders. The agreement, if any, is to be entered into between the parties separately giving therein a specific age which cannot be less than 60 yeas as mentioned in para 3 of Schedule 1-A. The legislature in its wisdom had prescribed 60 years of age for the workman and the same is to be a bench-mark for determining the age of all the workmen employed in establishments to which the provisions of the Act are applicable. The management in no case can be permitted to take advantage of its superior bargaining power by prescribing age of superannuation less than 60 yeas in any agreement and if it does, it will be against the public policy besides being unconstitutional under Article 14 of the Constitution of India. It is the duty cast upon the Certifying Officer to

see that what has been prescribed in its wisdom by the legislature is not diluted by any employer having superior bargaining power.

In the present case, the Certifying officer in the totality of the circumstances had certified 60 years of age of superannuation/retirement, but the appellate authority without any cogent and convincing reasoning had set aside the same. The appellate authority was required to look into the entire gamut and contours of the Act and Rules more particularly after the amendment has been carried whereby item No.10-A has been inserted after item No.10 of the Act. The appellate authority had only taken into consideration the draft standing orders without taking into consideration the pleas raised by the petitioner-union. The appellate authority had not even taken into consideration the law cited before him by the petitioner-union which he was bound to consider. The appellate authority had also erred in coming to the conclusion that the petitioner-union was debarred from agitating the demand for fixing date of retirement on the basis of settlement dated 31.10.2003. Mr. V.D. Khidta, Advocate has drawn the attention of this Court towards settlement dated 31.10.2003 which is at page 1146 of the paper book and more particularly to para 9 of the agreement, which is reproduced as under:

> **"The union and the workmen hereby give an undertaking that during the tenure of this settlement they shall not raise any demand/dispute relating to wage or having any financial implications for the company either directly or indirectly and/or any of the specific clauses of the**

settlement and/or other terms and conditions of the service of whatsoever nature whether or not involving any additional financial burden on the company during the currency of this settlement.

It is evident from the language employed in this clause as reproduced above that at no given time the petitioner-union had given up this right to agitate the age of retirement. The undertaking had been given only to the effect that during the tenure of the settlement, they shall not raise any demand/dispute relating to wage or having any financial implications for the company either directly or indirectly. Thus the finding recorded by the learned appellate authority below to the effect that the petitioner-union was debarred from raising the dispute qua age of retirement is palpably wrong. The learned appellate authority below had misdirected himself on the question of law as well as facts. The order suffers from non-application of mind. The appellate authority had failed to exercise the jurisdiction vested in him by drawing inference not warranted under the law. The appellate authority was required to take into consideration the points raised by both the parties. The appellate authority had only considered the plea raised by the management and the points raised by the petitioner-union have been brushed aside. The judgments cited before him including of the Hon'ble Supreme Court have not been given due respect which they command from all the authorities including the appellate authority. The appellate authority had come to an abrupt conclusion that the age of retirement had already been decided by the workman and the

management as mentioned in the appointment letter. In which appointment letter the age has been prescribed has not been mentioned.

The Hon'ble Supreme Court had discussed the scope of section 4 of the Industrial Employment (Standing Order) Act, 1946 in ***Bagalkot Cement Co. Ltd. V. R.K. Pathan and others***, AIR 1963 SC page 439 as under:

> **"The Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. It can be extended even to establishments whose complement of labour is less than one hundred and it does not apply to any industry to which Chapter VII of the Bombay Industrial Relations Act, 1946, applies or to any industrial establishment to which the provisions of the Madhya Pradesh Industrial Workman (Standing Orders) Act, 1959, apply. In other words, normally, Standing Orders have to be drafted by the employer and their certification obtained under the Act wherever the employer employs more than one hundred industrial workmen: S. 1 (3). The certifying authority under the Act means a Labour Commissioner or a Regional Labour Commissioner and includes any officer appointed by the appropriate Government by notification in the Official Gazette to perform all or any of the functions of a Certifying Officer under the Act: S. 2 (c). The Act**

provides for an appeal against the order passed by the Certifying Officer and the "appellate authority" means an Industrial Court, wherever it exists or in its absence an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under the Act: S. 2(a). "Standing Orders" are defined to mean rules relating to matters set out in the Schedule: S. 2 (g). Thus, the matters which have to be covered by the Standing orders and in respect of which the employer has to make a draft for submission to the Certifying Officer are matters specified in the Schedule. Section 3 requires the submission of the draft of Standing Orders within six months from the date on which the Act becomes applicable to an industrial establishment. Under S. 4, the Standing orders become certifiable if provisions are made therein for every matter set out in the Schedule and they are found to be otherwise in conformity with the provisions of the Act. After the amendment of this section made in 1956, the Legislature has imposed upon the Certifying Officer and the appellate authority the duty to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. Prior to the amendment, it was not open to the said authorities to examine the fairness of the Standing orders submitted by the employer. *The result of*

S. 4, therefore, is that the Standing Orders have to provide for all the topics specified in the Schedule and they have to be in conformity with the Act. Their reasonableness can be examined by the appropriate authorities and suitable modifications can be made by them in accordance with their decision. **Section 5 provides for the procedure which has to be followed by the Certifying Officer before certifying the Standing Orders. The procedure is intended to have an opportunity to both the parties to be heard before the final order is passed. Section 6 provides for an appeal and S. 7 lays down that the Standing Orders shall come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent as required by S. 5, sub-sec. (3), or where an appeal is preferred, on the expiry of seven days from the date on which the copies of the appellate order are sent under S. 6 (2). Section 8 requires the Certifying Officer to keep a register of standing orders under S. 9, the said Standing orders have to be prominently posted by the employer in English and in the language understood by the majority of the workmen on special boards. Section 10 deals with the duration and modification of standing orders. It provides that except by agreement, the standing orders, after they are certified, shall not be liable to modification until the expiry of six months from the date on which they came**

into operation. Section 10 (2) empowers both the employer or the workman to apply for a modification in the said Standing Orders. It would thus be clear that after they are certified, the standing orders have to remain in force for six months unless, of course, they are modified in the meanwhile by consent. After six months are over, an application for modification in the standing orders can be made either by the employer or the employees and the problem would be considered after following the procedure prescribed by the Act for certifying the original standing orders. Section 11 confers the necessary powers of a Civil Court on the Certifying Officer & the appellate authority and S. 12 prohibits the admission of oral evidence which has the effect of adding or otherwise varying or contradicting standing orders, as finally certified under the Act, in any Court. Section 13 provides for penalties and the procedure to enforce them. Section 13A deals with the problem of interpretation of the standing orders and S. 13B provides for exemption of Industrial establishment therein specified. Section 14 confers on the appropriate Government power to exempt conditionally or unconditionally, any industrial establishment, and S. 15 confers on the appropriate Government the power to make rules to carry out the purpose of the Act, and in particular, to provide for the matters covered by cls. (a) to (e) of sub-cl. (2). Section 15

(3) contains the salutary provision that every rule made by the Central Government under S. 15 has to be placed before the house in the manner prescribed by it. The Schedule to the Act contains 11 clauses. Clauses 1 to 10 deal with the several topics in respect of which standing orders have to make a provision and Cl. 11 refers to any other matter which may be prescribed. This last clause shows that an addition may be made by the appropriate Government if it is thought necessary to do so. That, in brief, is the scheme of the Act.

The Apex Court in ***Associated Cement Co. Ltd., v. P.D. Vyas and others***, AIR 1960 SC 665 has held that it is the duty of the Certifying Officer to inquire whether the draft standing orders should or should not conform to model standing orders. Their Lordships have held as under:

"Then, the next relevant provision of the Act is contained in S. 4 which provides that standing orders shall be certifiable under this Act if (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act. The rest of the provision of S. 4 has already been cited and considered by us. Having thus provided for the tests which have to be satisfied before a draft submitted by the employer can be treated as certifiable, S. 5 provides for the procedure of the

proceedings which are taken before the certifying officer. Section 5 (2) lays down that after notice is given to the parties concerned the certifying officer shall decide whether or not any modification of, or addition to, the draft submitted by the employer is necessary to render the draft standing orders certifiable under the Act, and shall make an order in writing accordingly. Sub-section (3) of S. 5 then provides for certifying the draft after making modifications, if any, under sub-s. (2). There is one more section to which reference may be made. Section 15 (2) (b) provides that the rules which the appropriate government may make under the Act may set out model standing orders for the purposes of this Act. The cumulative effect of these provisions is that the certifying officer has to be satisfied that the draft standing orders deal with every matter set out in the Schedule and are otherwise in conformity with the provisions of the Act. This latter requirement necessarily imports the consideration specified in S. 3, sub-s. (2), that is to say, the draft standing order must be in conformity with the model standing order which is provided under S. 15 (2) (b) for the purposes of the Act, and, as we have already seen, unless it is shown that it would be impracticable to do so, the draft standing order must be in conformity with the model standing order. It is quite true that this requirement does not mean that the draft standing order

must be in identical words but it does mean that in substance it must conform to the model prescribed by the appropriate government."

The Apex Court in ***Salem-Erode Electricity Distribution Co., (P) Ltd. v. Their Employees' Union***, AIR 1966 SC 808 has gone into the main purpose and object of the Industrial Employment (Standing Orders) Act, 1946. Their Lordships have held as under:

"In dealing with this point, it is necessary to examine the broad features of the Act and consider its main purpose and object. The Act was passed in 1946 and its main object was to require the employers in industrial establishments to which the Act applied, to define formally the terms and conditions of employment in their respective establishments. In imposing this obligation on the employers, the Act intended that the terms and conditions of industrial employment should be well defined and should be known to the employees before they accepted the employment. As we will presently point out, one of the objects of the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment. Before the Act was passed, employees in many industrial establishments were governed by oral terms and conditions of service which were not uniform and which had been entered into on an ad hoc basis. The

Act now requires that terms and conditions of employment in relation to matters specified in the Schedule must be included in the Standing orders and they must be certified. It would at once be clear that by the operation of the Act, all industrial establishments will have to frame terms and conditions of service in regard to all the matters specified in the Schedule, and that naturally would introduce an element of uniformity inasmuch as industrial employment in all establishments to which the Act applied would, after the Act was passed, be governed by terms and conditions of service in respect of matters which are common to all of them. That, in brief, is the object which the Act intends to achieve."

The Apex Court in ***R&H Districts Electric Supply Co. s. State of U.P.*** AIR 1966 SC 1471 has held that it is for the appropriate authority to decide whether a particular standing order is fair or reasonable or not. Their Lordships have held as under:

"The next contention which Mr. Setalvad has raised is that the appropriate authorities under the Act were in error in insisting upon conformity with the Model Standing orders under S. 3 (4). His argument is that in certifying the Standing orders, the appropriate authorities may, no doubt, compare them with the Model Standing orders, but they need not insist upon strict compliance with them. He also suggested that it would be open to the employers to include matters in the

Standing orders which may not strictly be included in the schedule. In this connection, he relied on the fact that the draft Standing Orders which the appellant had submitted for certification, had been assented to by the employees. In our opinion, this contention is misconceived and must be rejected. The consent of the employees is, no doubt a relevant factor which the certifying authorities may bear in mind in dealing with the question as to the fairness or reasonableness of the said Orders. If both the parties agree that certain Standing orders submitted for certification are fair and reasonable, that no doubt is a consideration which the appropriate authority must take into account: but clearly, the appropriate authority cannot be denied the jurisdiction to deal with the matter according to its own judgment. It is for the appropriate authority to decide whether a particular Standing order is fair or reasonable, or not. Sometimes, the employees may not be organized enough to resist the pressure of the employer or may not be articulate; and where the employees are not organized or strong enough to put forward their point of view vigorously, the fact that the employer has persuaded his employees to agree to the draft Standing orders, will not preclude the appropriate authority from discharging its obligation by considering the fairness or reasonableness of the draft. The present case itself is an illustration in point. When the Standing Orders were drafted by the appellant and submitted for certification, it was found that the employees of the appellant had no Union of their

own: and so, three representatives were elected by the employees at the instance of the Labour Department. The fact that the employees' representatives have not appeared before this Court also shows that they are either not organized enough, or have not the financial capacity to take steps to engage lawyers to appear before this Court. Therefore, we do not think that the consent of the employees can have a decisive significance in certification proceedings."

The Punjab and Haryana High Court in ***Khadi Gram Udyog Sangh V. Jit Ram***, 1975 (II) LLJ 413 has held as under:

> **"A bare reading of the section will show that the Appellate Authority has no power to set aside the order of the certifying officer. It can either confirm the standing orders in the form certified by the certifying officer or amend the said standing orders by making such modifications thereof or additions thereto, as it thinks necessary so as to render the standing orders certifiable under the Act. The learned counsel for the respondents also concedes in all fairness that the Appellate Authority could not set aside the order of the certifying officer. Moreover, on this precise ground, the Division Bench of this Court had earlier set aside the order of the Appellate Authority and remanded the case to it for fresh decision. In this view of the matter, impugned order of the Appellate Authority, though well reasoned, is set aside."**

The Full Bench of Allahabad High Court in ***Hari Shankar Jain and another v. Executive Engineer, Rural Electrification Division, Etah and others,*** 1976 LAB I.C. 1720 has held that in view of the amendment it became the duty of the Certifying Officer or the Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of the standing orders. Their Lordships of the Allahabad High Court have held as under:

> **"In respect of question No.3 it was contended by learned counsel for the appellants that Section 13-B of the Standing orders Act applied only to industrial establishments of the Government and to no other. On the other hand it has been urged by learned counsel for the Board that it applies even to industrial establishments of State Electricity Board. Before proceeding to examine the merits of these contentions it will be relevant to recall the genesis of the amendments introduced in the Standing orders Act by the industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, (Act 36 of 1956). Section 4 of the Standing Orders Act, before its amendment by Act 36 of 1956 aforesaid, was as follows:-**
>
> **4. Conditions for certification of standing orders.- Standing orders shall be certifiable under this Act if-**
>
> **(c) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and**

(d) the standing orders are otherwise in conformity with the provisions of this Act;

and it (shall be the function) of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Accordingly the Certifying Officer or the appellate authority was not competent to adjudicate upon the fairness or reasonableness of the provisions of the Standing orders. By Section 32 of Act 36 of 1956 the words "shall be the function" in Section 4 of the Standing orders Act were substituted for the words "shall not be the function". In view of this amendment it became the duty of the Certifying Officer or the appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing orders. It appears that there were industrial establishments even before Act 36 of 1956 was passed in which the workmen employed were government servants, may be on deputation or otherwise. At that stage the only requirement of the employer was to submit to the Certifying Officer the draft Standing Orders and such draft could be as was considered proper by the employer."

The Hon'ble Supreme Court has held in ***Sudhir Chandra Sarkar V. Tata Iron and Steel Co. Ltd and others*** (1984) 3 SCC 369 that certified standing orders become statutory conditions of

service and the rules framed by a company for the employees get incorporated with the statutory conditions of service and if any provision of such rules read with standing orders confer absolute and unfettered discretion on the employer to allow or disallow the rightful claim of employees, that would be unfair and unreasonable as also arbitrary and subject to the test of Article 14 of the Constitution of India. Their Lordships of the Supreme Court have held as under:

> **"Can such social security measure be denuded of its efficacy and enforcement by so interpreting the relevant rules that the workman could be denied the same at the absolute discretion of the employer notwithstanding the fact that he or she has earned the same by long continuous service? If Rule 10 is interpreted as has been done by the High Court, such would be the stark albeit unpalatable outcome. It is therefore necessary to take a leaf out of history bearing on the question of retiral benefits like pension to which gratuity is equated. In Burhanpur Tapti Mills Ltd. V. Burhanpur Tapti Mills Mazdoor Sangh this Court observed that: "a scheme of gratuity and a scheme of pension have much in common. Gratuity is a lump sum payment while pension is a period payment of a stated sum". Undoubtedly both have to be earned by long and continuous service.**
>
> **For centuries the courts swung in favour of the view that pension is neither a bounty nor a gratuitous payment**

for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. Deokinandan Prasad v. State of Bihar, State of Punjab v. Iqbal Singh and D.s. Nakara v. Union of India. If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par.

The question then is: can the Court ignore Rule 10? If gratuity is a retiral benefit and can be earned as a matter of right on fulfilling the conditions subject to which it is earned, any rule conferring absolute discretion not testable on reason justice or fair play must be treated as utterly arbitrary and unreasonable and discarded. If rules for payment of gratuity became incorporated in the Standing orders and thereby acquired the status of statutory conditions of service, an arbitrary denial

referable to whim, fancy or sweet-will of the employer must be rejected as arbitrary. Section 4 of the 1946 Act which confers power on the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions would enable this Court to reject that part of Rule 10 conferring absolute discretion on the employer to pay or not to pay the gratuity even if it is earned as utterly unreasonable and unfair. It must be treated as ineffective and unenforceable. It is well settled that if the Certifying Officer and the appellate authority under the 1946 Act while certifying the Standing orders has power to adjudicate upon the fairness or reasonableness of the provisions of any standing orders, this Court in appeal under Article 136 shall have the power to do the same thing when especially it is called upon to enforce the unreasonable and unfair part of the Standing order. It therefore follows that part of Rule 10 which confers absolute discretion on the employer to pay gratuity even if it is earned, at its absolute discretion is ineffective and unenforceable. This approach does not acquire any precedent but if one is needed the decision of this Court in Western India March Company Ltd. Case clearly rules to that effect. In that case, the company relied on a special agreement which was to some extent in derogation of the provisions of the Certified Standing

order. The court observed that to uphold such special agreement would meant giving a go-by to the principle of three party participation, in the settlement of the terms of employment, as represented by the Certified Standing orders and therefore, the inconsistent part of special agreement is ineffective and unenforceable. The claim to absolute discretion not to pay gratuity even when it is earned is a hangover of the laissez faire days and utterly inconsistent with the modern notions of fair industrial relations and therefore, it must be rejected as ineffective and hence unenforceable.

Viewed from a slightly different angle, our constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the anti thesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Article 14. Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot coexist. Therefore, also the conferment of absolute discretion by Rule 10 of the Gratuity Rules to give or deny the benefit of the rules cannot be upheld and must be rejected as unenforceable."

It is clear from the language of section 4 of the Act that the authorities concerned can always go into the fairness and

reasonableness of the standing orders. The Division Bench of the Delhi High Court after analyzing section 4 of the Industrial Employment (Standing Order) Act, 1946 has held that before certifying any modification of any standing order, the competent authority has to examine whether modification is in conformity with Model Standing Order and also whether such modification is fair and reasonable. Their Lordships have held in ***Indian Oil Corporation Ltd. Vs. Joint Chief Labour Commissioner & Appellate Authority and others*** 1990 (1) Labour Law Journal 408 as under:

> **"So, this judgment clearly shows that the authorities have jurisdiction to go into the question of impracticability of the Standing Order to be in conformity with the Model Standing order as well as the question of fairness or reasonableness of the same and the inquiry has to be an integrated one. The reasoning given in this judgment appears to be quite sound and there is no reason to differ with the same. After all the Legislature had not put any restriction on the power of the Authority under the Standing orders Act for examining the fairness or reasonableness of any Standing Order. There is no exception carved out in favour of Model Standing Orders that they would be immune from the jurisdiction of the appropriate authorities to adjudicate upon their fairness or, reasonableness. The language of Section 4 leaves no room for doubt that besides seeing whether the Standing Orders are in conformity with the Model Standing orders**

the authorities have to see whether they are fair or reasonable. A broad language has been used by the Legislature by mentioning that it shall be the duty of the authorities to adjudicate upon the fairness or reasonableness of any Standing Order. The words "any Standing order" would include "Model Standing orders", "proposed Standing Orders" and the proposed modification to the already Certified Standing orders.

Could it be said that providing a better service condition to the workmen is in contradiction with the Model Standing order if the condition so provided is fair and reasonable? Answer must be in the negative.

In the case of *Shahdara Delhi Sharanpur Light Railway Co. Ltd.* (supra), the Supreme Court has laid down that it is well settled that the meaning which words ought to be understood to bear is not to be ascertained by any process akin to speculation and the primary duty of a Court is to find the natural meaning of the words used in the context in which they occur, that context including any other phrase in the Standing orders Act which may throw light on the sense in which the makers of this Act used the words in dispute. The Court ought, therefore, to give a literal meaning to the language used by Parliament unless the language is ambiguous or its literal sense gives rise to an anomaly or results in something which would defeat the purpose of this Act.

Keeping in view the said principle of law laid down by the Supreme Court the words used in Section 4 leave on room for any two interpretations when the words "any standing orders" literally would include all Standing Orders, even those conforming to the Model Standing orders, with a view to examine their fairness and reasonableness.

The Management before the Supreme Court had challenged the said modification on two aspects-firstly, the scope of the power of modification under section 10 (2) of the Standing orders Act and secondly, on merits. The plea taken was that jurisdictional powers of the authorities under the Standing orders Act to certify modifications of the existing Standing Orders are limited to cases where a change of circumstance is established. In the alternative it was argued that if at the time of the last certification certain circumstances were, for one reason or the other, omitted from consideration they would constitute a valid reason for modification and the modification would be granted even though in such a case a change of circumstances has not occurred. A plea was taken that principles analogous to *res judicata* would apply to an application for modification. The Supreme Court after noticing the provisions of the Act and also the amendment introduced in 1956, negatived the said contentions and noticing the provisions of Section 10, it

held that Section 10 does not state that once a Standing Order is modified and modification is certified, no further modification is permissible except upon proof that new circumstances have arisen since the last modification. It was held that as a matter of fact the Legislature has not incorporated any words in the sub-section restricting the right to apply for modification except, of course, the time limit of six months. It was held that in an application for modification the issue before the authority would be not as to the reasonableness or fairness of the Standing Orders or their last modification, but whether the modification now applied for is fair and reasonable, and therefore, the contention that a change of circumstances is a condition precedent to the maintainability of an application under Section 10 (2) or that an application for modification without proof of such a change amounts to review by the same authority of its previous order is not correct. In this judgment it was also held that the Industrial Tribunal should be slow and circumspect in applying technical principles such as acquiescence and estoppel.

The Apex Court in ***Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union and others***, (1999) 1 SCC 626 has held as under:

"The contention of the learned counsel for Respondent 1 that the Standing orders as made by the appellant must

conform to the Model Standing orders cannot be accepted. It is true that originally the jurisdiction of the Certifying Officer as also that of the appellate authority was very limited and the only jurisdiction available to them under the Act was to see whether the Standing orders made by the establishment and submitted for their certification conformed to the Model Standing Orders. This required the process of comparison of the Draft Standing orders with the Model Standing orders and on comparison, if it was found that the Draft Standing Orders were in conformity with the Model Standing orders, the same would be certified even if they were not reasonable or fair. The workmen particularly had no say in the matter and they would not be listened even if they agitated that the Draft Standing orders were not fair or reasonable.

In 1956, radical changes were introduced in the Act by Parliament as a result of which not only the scope of the Act was widened, but jurisdiction was also conferred upon the Certifying Officer as also the appellate authority to adjudicate upon and decide the question relating to fairness or reasonableness of any provision of the Standing orders.

In the instant case, the Standing orders as finally certified cannot be said either to be not in consonance with the Model Standing orders or reasonable or unfair."

It is evident from the language employed in section 4 of the Act that the appellate has no jurisdiction to set aside the orders of the Certifying Officer. The appellate authority can only confirm the standing orders either in the form certified by the certifying officer or amend the said standing orders by making such modifications thereof or addition thereto, as it think necessary so as to render the standing orders certifiable under the Act. The appellate authority in the present case without looking into the bare provisions of section 6 of the Act had set aside the order.

The Bombay High Court in ***Welcome Group Searock Land's End v. Tryambak Karbhari Wagh***, 2003 Vol.3 Labour & Industrial Cases 2685 has held as under:

> **"It was also sought to be contended on behalf of the employer that the appointment letter issued to the workman Appu discloses that the age of retirement was 55 years and, therefore, it cannot be said that the workman, as a matter of right, could have insisted for extension of the retirement age beyond the age of 55 years. Attention was drawn to Cl. 4 of the appointment letter, which reads thus:-**
>
> > **"You will retire on superannuation from our service on December 31, of the year in which you attain the age of 55 years or earlier in the case of female employees. The date of your birth given by you and admitted by us as correct and referred to**

hereinabove, shall be the basis of your retirement from our service."

This argument is sought to be countered by the Advocate for the workmen by submitting that the Certified Standing orders were certified on 30.7.1980, much after the issuance of the appointment letter. Irrespective of the fact whether the Certified Standing orders were certified prior to the issuance of the appointment letter or subsequent thereto, needless to say that once the Standing Orders by which the relationship of the employer-employee is governed clearly provides the retirement age to be of 55 years, subject to its extension of maximum of three years by production of physical fitness certificate issued by a Civil Surgeon, any clause in the appointment letter which is contrary to the provisions of the Standing orders cannot create any right in favour of the employer. The Standing orders have statutory recognition which the appointment letter does not enjoy as far as the contents thereof which are contrary to the Standing orders. Being so, merely because in the appointment letter it was informed that the employee would retire at the age of 55 years, once it is clear that the Standing orders permit him to render services for a period of three more years after the age of 55 years, subject to condition specified in the Cl. 27 of the Certified Standing Orders, the said Cl. 4 in the appointment letter

cannot come to the rescue of the management to justify its action in the matter."

Now, this Court is required to consider what should be the age of retirement/superannuation for the industrial workmen. The Apex Court had been considering this aspect in its various judgments. The consistent view of the Hon'ble Supreme Court is that the age of the industrial workmen of retirement should be 60 years as far as Delhi, Bombay and Calcutta regions are concerned. The Hon'ble Supreme Court has reached these conclusions on the basis of various parameters required for fixing the age of superannuation of industrial employees including the nature of work, wage structure, character of climate etc. The Hon'ble Supreme Court had assessed the age of industrial employee at 60 years in late 60's and now with the rising life expectancy it cannot be less than 62 years. The Hon'ble Supreme Court had considered the parameters/guidelines in fixing the age of superannuation and had assessed the age of industrial workmen as 60 years in the following pronouncements.

The Supreme Court in ***G.K.W.Pr. Ltd. V. P.J. Steerling*** AIR 1959 SC 1279 has culled out following factors required to be taken by Industrial Tribunal in fixing the age of superannuation. Their Lordships have held as under:

"We would, however, like to add that this conclusion should not be taken as a decision on the general question of fixing the age of superannuation in the case of industrial employees. In fixing the age of superannuation industrial tribunals have to take into account several

relevant facts. What is the nature of the work assigned to the employees in the course of their employment? What is the nature of the wage structure paid to them? What are the retirement benefits and other amenities available to them? What is the character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region? What is generally the practice prevailing in the industry in the past in the matter of retiring its employees? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute. In the present case, as we have already observed, the age of 55 has been fixed by both the tribunals for future entrants; and this is substantially based on the standing order which we have already considered. In regard to the prior employees it is not seriously disputed that the retirement age can and may be fixed at 60. It is under these circumstances that we have come to the conclusion that the age of superannuation for prior employees should be fixed at 60."

The Supreme Court has upheld the order of the Tribunal in fixing the age of 60 years instead of 55 for the clerical staff in ***Dunlop Rubber Co. Vs. The Workmen (Clerical Staff) and others,*** AIR 1960 SC 207. Their Lordships have held as under:

"We shall first take the question of retirement age. The tribunal found that retirement age was fixed between 55 years and 60 in various concerns in Bombay. It was also of opinion that 55 years was too low an age to be fixed for retirement for the clerical staff and that the trend in all the awards had in recent times been to fix it at 60 years. It, therefore, ordered that so far as the clerical staff was concerned retirement age should be fixed at 60 years instead of 55. We may in this connection refer to a recent decision of this Court in Guest, Keen, Williamsn (Private) Ltd. Calcutta v. P.J. Sterling, C.A. No. 403 of 1957, D/15.5.1959: (AIR 1959 SC 1279), where the age of superannuation of employees in service before the Standing orders came into force, in that concern was fixed at 60 years. In these circumstances if the tribunal though that it would be fair to fix 60 years as the age of retirement for clerical staff in spite of the fact that in the agreement of 1956 the retirement age was fixed at 55 years, it cannot be said that the tribunal's order was not in accord with the prevailing conditions in many concerns in that region. In these circumstances we are of opinion that no interference is called for in this matter."

The Supreme Court has held in ***Imperial Chemical Industries (India) v. The Workmen***, AIR 1961 SC 1175 that where the tribunal losses sight of important document filed by the workmen along with their claim, showing uniform trend in the matter of fixing of

the age of retirement the Supreme Court will consider the question for itself. Their Lordships have held as under:

> **"It is true that in matters of this kind this Court generally does not like to interfere with the decisions of the Tribunal if it is satisfied that the Tribunal has reached its conclusions after considering the relevant evidence adduced before it. There is no doubt that in fixing the age of retirement no hard and fast rule can be laid down. The decision on the question would always depend on a proper assessment of the relevant factors and may conceivable vary from case to case; but in the present case it seems to us that Mr. Dudhia is right in contending that in reaching its conclusion the Tribunal has somehow lost sight of an important document, filed by the workmen along with their claim. This document (Ex.B) shows that out of 13 industrial concerns there set out, in regard to 10 the age of retirement has been fixed at 60 either by an award or by agreement, and that in regard to the remaining 3 there is no age of retirement. The record shows that the facts mentioned in this statement were not disputed before the Tribunal. Indeed in most of the cases reference is made to an award, and it was presumably realized by the company that the awards in those respective cases had in fact fixed the age of retirement at 60. This document has not been considered at all by the Tribunal in dealing with the question about the age of**

retirement, and that gives strength to the argument of Mr. Dudhia that the Court ought to reconsider the merits of the dispute for itself.

It appears that the company filed a list (Ex.C-1) in support of its case that the age of retirement had been fixed at 55 in 14 industrial concerns; and in reply to this list the workmen filed their own explanation (Ex.U-1). This explanation shows that in some of the cases an industrial dispute was actually pending adjudication or demands had been made by the employees to raise the age of retirement. In regard to 4 Oil Companies specified by the company in its list (Ex.C-1) it appears that all of them have a pension scheme, and that undoubtedly makes a substantial difference. It is generally recognized in industrial adjudication that where an employer adopts a fair and reasonable pension scheme that would play an important part in fixing the age of retirement at a comparatively earlier state. If a retired employee can legitimately look forward to the prospect of earning a pension then the hardship resulting from earlier compulsory retirement is considerably mitigated; that is why cases where there is a fair and reasonable scheme of pension in vogue would not be comparable or even relevant in dealing with the age of retirement in a concern where there is no such pension scheme. In regard to Godrej and Boyce there was a dispute between the

parties as to the real age of retirement fixed by the employer; similarly there was a dispute about the age of retirement in Brooke Bond (India) Private Limited. The learned Tribunal considered, the evidence supplied by the two documents. Ex.C-1 and Ex. U-1 and held that having regard to all the relevant circumstances it would not be unreasonable to fix the retiring age at 58 in the present case. It is true that in dealing with this question the Tribunal has commenced its discussion with the observation that in a number of concerns the retirement age is 60, and that there had been some time a trend to increase the retirement age from 55 to upwards; but the tone and trend of the discussion leave no room for doubt that the Tribunal failed to take into account the evidence supplied by the workmen in their document Ex.B filed along with their claim. This evidence strongly suggests almost a uniform tendency in Bombay to fix the age of retirement at 60 and not 55. If the Tribunal had considered this evidence and given reasons why it did not justify the workmen's claim for fixing the age of retirement at 60 it would have been another matter. Since the award does not refer to this document and gives no reasons why the trend disclosed by the document should not be adopted in the present case it has become necessary for this Court to consider that question for itself.

The learned Attorney-General contends that the industrial concerns to which the said document Ex.B refers are not comparable to the company, & so no importance should be attached to the trend disclosed by the said document. We are not impressed by this argument. One has merely to look at the industrial concerns specified in the list filed by the company to realize that if the said concerns are comparable in the present proceedings there is no reason why the concerns specified in Ex.B should be rejected as not comparable. Besides, in the case of the Dunlop Company, 1960-2 SCR 51: (AIR 1960 SC 207), as in the present case, the dispute was and is between clerical and the subordinate staff and their employer, so that some of the conditions which may be relevant in fixing the age of retirement of factory workers may not necessarily apply. As this Court pointed out in the case of the Dunlop Company, 1960-2 SCR 51: (AIR 1960 SC 207) the recent trend in the Bombay area clearly appears to be to fix the age of retirement at 60. That being so we see no reason why the age of retirement of the workmen in the present appeal should not be similarly fixed. As we have already observed, if the Tribunal has considered the uniform trend disclosed by Ex. B and had stated its reasons for not giving effect to that trend it would have been another matter; we would then have considered whether we should interfere with

the discretion exercised by the Tribunal or not. The Tribunal however does not appear to have considered this evidence. On the whole we are satisfied that Mr. Dudhia is right in contending that the material facts in this case are very similar to the facts in the case of the Dunlop Company, 1960-2 SCR 51: (AIR 1960 SC 207). That being so, we think that the age of retirement in the case of the workmen concerned in the present appeal should be raised to 60 from 55."

The Apex Court in G.M. Talang and others Vs. Shaw Wallace and Co; Ltd and another, AIR 1964 SC 1886 has held as under:

"As has already been noticed there is no dispute that the age of compulsory retirement should not remain at 55. The dispute is whether it should be fixed at 58 or at 60. It is interesting to refer in this connection to the information that has been collected by the Pay Commission (1957-59) as regards the pensionable ages prescribed under the Pension Insurance Schemes for employees generally or for industrial employees and under social assistance or universal schemes in forty-eight countries in 1954. According to this the pensionable age is 70 in two countries; 67 in another two; 65 in twenty four, 60 in seventeen, 55 in two and 50 in one. Thus out of 48 countries for which information was available it was found that in 45 countries the pensionable age was fixed

at 60 or more. As they Pay Commission Report pointed out:-

"This is particularly remarkable, considering that the countries differ widely in demographic constitution, levels of economic development, and climatic and social conditions; and it indicates a virtual unanimity of competent opinion that balancing the various factors- physiological, economic and social- that are relevant, the normal working life should continue upto the age of 60, and may well go on upto 65 years."

It is undoubtedly more useful, however, and indeed essential for our present purpose to examine the trends in this latter in our own country and specially in the region in which the present dispute has arisen. In the delicate task of adjusting needs of the employees to the interests of the employers and what is even more important to the general interests of the country at large, industrial adjudication has to pay special attention to the prevailing practice in the industrial region concerned. If in any particular region employees have been successful in their claim for fixing the age of retirement at 60 this very success is bound to raise in others in the region similar expectations. Refusal of similar relief to them is likely to create discontent. It is the endeavour of industrial adjudication to prevent this. That is why on questions of age of retirement and hours of work and other similar

matters industrial tribunals attach much weight to what has been done in other industrial concerns in the neighbourhood in recent times-whether by agreement or by adjudication.

In support of their demand for fixing the age of retirement at 60 the workmen tried to show that in recent years at least the tendency in comparable concerns in Bombay region has been to fix the retirement age at 60. The Chart which is marked Ex.U-5 mentions 50 concerns in which the age of retirement is 60. In several of these this age had been fixed as far back as 1950 while in the rest the age was fixed in later years, that is, between 1952 and 1961. The workmen claim that these showed clearly a tendency in the Bombay region to fix the age of retirement in comparable concerns at 60. Special emphasis was naturally placed on some decisions of this Court which contained pronouncements as regards the existence of such a trend. In imperial Chemical Industries (India) Private Ltd. V. The workmen, (1961) 2 SCR 349: (AIR 1961 SC 1175) where the Tribunal had raised the age of retirement from 55 to 58 and both parties appealed, this Court pointed out that one of the documents on the record "would conclusively show that in Bombay the age of retirement is almost invariably fixed at 60 and not at 55." In an earlier decision of this Court in Dunlop Rubber Co. Ltd. Vs. Workmen (1960) 2 SCR 51 : (AIR 1960 SC 207)

it had been urged that the employer was an All India concern and that changing the terms and conditions of service in regard to the age of retirement in one place might unsettle the uniformity and might have serious repercussions in other branches. The Court pointed out that though this was a relevant consideration its effect had to be judged in the light of other material and relevant circumstances, and that one of the important material considerations in this connection would be that the age of retirement can be and often is determined on industry-cum-region basis. The Court then took into account the fact that the Tribunal had found that in all the awards in recent times in various concerns in Bombay region the trend had been to fix the age of retirement at 60 years. It was mainly in view of this finding of the Tribunal that this Court refused to disturb the award fixing the age of retirement at 60 years. It is important to notice that the correctness of the Tribunal's finding that in all the awards in recent times in the Bombay region the trend had been to fix the retirement age at 60 years, was not challenged before this Court.

In the present case an attempt appears to have been made on behalf of the respondent Company to show that it was not correct to say that the trend in Bombay region had been to fix the age of retirement at 60. Reliance was placed for this purpose on the Chart Ex. C 1. It appears

that the respondent company wrote to the Bombay Chamber of Commerce to ascertain from its member concerns as regards the age of retirement observed by them and the information received from some of them was incorporated in this Chart. The workmen objected to this being received in evidence on the ground that the original letters had not been brought on the record. It is not however seriously disputed that the Chart correctly reproduces the information as regards the age of retirement given the various concerns named there. We think therefore that objection was rightly rejected by the Tribunal. This Chart shows the age of retirement for 75 concerns. In most of the cases the age of retirement is shown as 55 and in a few at 58. At first sight therefore it appears to afford impressive testimony against the workmen's case that the recent trend in Bombay has been to fix the age of retirement as 60. But on a closure examination it is clear that this document is of little assistance for finding out the recent trend. There is no indication at all as to how long ago the age of retirement in these concerns was fixed at 55 or 58. The statement filed by the workmen to explain this Chart shows that in two of these cases, viz., Ingerzool Band and Northern Assurance Co., the demand for fixing the age of retirement at 60 years is under negotiation. Exhibit U6 also shows that in 25 of these concerns, the clerical and

subordinate staff were not organized into trade unions. There is thus good ground for thinking that the reason why these concerns have kept the age of retirement at 55 or 58 are special to them and do not show any recent trend in the matter. In spite of these infirmities this document, Ex. CI, appears to have impressed the Tribunal. The main difficulty in accepting the Company's case on this point, viz., the pronouncements of this Court, however, remained. So, the Tribunal considered it to be its duty to enquire whether the conclusion recorded by this Court in some of its earlier decisions as to the relevant trend in the Bombay region was accurate. Having embarked on this enquiry, the Tribunal appears to have taken considerable pains to perform this duty and it has ultimately persuaded itself to hold that no such trend is established in fact. We ought to add in this connection, that the approach adopted by the Tribunal in dealing with this aspect of the problem is not very commendable, and that its present conclusions that what was said by itself on an earlier occasion and was confirmed by this Court in appeal, was in fact inaccurate, is on the whole unsound.

If this Court had erred in making those pronouncements we would be the first to admit such mistakes and to correct the error. After careful consideration of all the materials placed on this record, we have however found nothing to justify any doubt

about the correctness of what was said on the earlier occasion. On the contrary, the awards and agreements on the question of age of retirement about which information is furnished by the several documents on this record clearly show a consistent trend in the Bombay region to fix the retirement age of clerical and subordinate staff at 60. The very few departures from this practice which the Tribunal has mentioned are, in our opinion, wholly insufficient to indicate any slowing down of this trend. What the Tribunal has failed to notice is that instances which may justify a revision of the judicial opinion expressed on an earlier occasion about a particular trend must be strong and unambiguous and they must speak for the period both before and more particularly after the previous finding had been recorded in the matter.

Notice has also to be taken in this connection of the Report of the Normus Committee in which the following opinion was expressed:

> **"After taking into consideration the views of the earlier Committees and Commissions including those of the Second Pay Commission the report of which has been released recently, we fell that the retirement age for workmen in all industries should be fixed at 60. Accordingly, the norm for retirement age is fixed at 60."**

This considered opinion of a Committee on which both employers and employees were represented emphasis the fact that in the Bombay region at least there is a general agreement that the age of retirement should be fixed at 60. The Tribunal has referred to these observations, but has brushed them aside in a way for which we find no justification."

The Supreme Court in ***British Paints V. Its workmen*** AIR 1966 SC 732 has held that there should not be any discretion in the age of retirement of a clerical staff and other workmen. Their Lordships have held as under:

"Considering that there has been a general improvement in the standard of health in this country and also considering that longevity has increased, fixation of age of retirement at 60 years appears to us to be quite reasonable in the present circumstances. Age of retirement at 55 years was fixed in the last century in Government service and had become the pattern for fixing the age of retirement everywhere. But time in our opinion has now come considering the improvement in the standard of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level, and we consider that generally speaking in the present circumstances fixing the age of retirement at 60 years would be fair and proper, unless there are special

circumstances justifying fixation of a lower age of retirement.

As to the factory workmen, it is urged that their age of retirement should be fixed at a lower level as work in the factory is more arduous than the work of clerical and subordinate staff, and in this connection reliance is placed on the decision of this Court in Jessop and Co. Ltd. (1964) 1 Lab LJ 451 (SC), where one age was fixed for clerical and subordinate staff and a slightly lower age was fixed for the factory-workmen. Here again we are of opinion that generally speaking, there is no reason for making a difference in the age of retirement as between clerical and subordinate staff on the one hand and factory workmen on the other, unless such difference can be justified on cogent and valid grounds. It is only where work in the factory is of a particularly arduous nature that there may be reason for fixing a lower age of retirement for factory workmen as compared to clerical and subordinate staff. This appears to have been so in the case of Jessop and Co. Ltd. (1964) I Lab LJ 451 (SC) for that was a heavy engineering concern, where presumably work in the factory was much more arduous as compared to the work of clerical and subordinate staff there might, therefore, have been then some justification for fixing a lower age of retirement for factory workmen in the case of those factories where the work is of a particularly

arduous nature. But the present company is a paints manufacturing company and there is in our opinion no reason to suppose that the work in the factory in the present case is particularly arduous as compared to the work of clerical and subordinate staff. We therefore, think that even in the case of future factory workmen in the present concern there is no special reason why the age of retirement should be fixed at a lower level. It is of course always possible for an employer to terminate the services of a workman if he becomes physically or mentally incapable of working before the age of retirement. This power being there, there is no reason to suppose that there will be inefficiency in work on account of fixing the age of retirement at 60 yeas, on the other hand with the age of retirement at 60 years there will be added advantage that more experienced workmen will be available to the management and that would be a cause for greater efficiency. On the whole, therefore, we are of opinion that the age of retirement in the case of factory workmen also in the present company should be fixed at the age of 60 years. We, therefore, modify the award of the tribunal and fix the age of retirement for the clerical and subordinate staff as well as for the factory workmen, whether existing or future, at the age of 60 years."

The Apex Court in ***Hindustan Antibiotics v. Workmen,*** AIR 1967 SC 948 has held that the age of retirement of the employees

should be raised to 60 years and it was not proper to give discretion to employer to raise age of retirement or not to do so, for vesting of such uncontrolled discretion in employer might lead to manipulation and victimization. Their Lordships have held as under:

> **"The next question is the fixation of the age of retirement for the employees. The existing age of retirement is 55 extendable to 60 years at the discretion of the management if the workmen are considered suitable and if they are medically fit and mentally alert. The Tribunal raised the age of retirement from 55 years to 58 years but gave a discretion to the Company to continue an employee after that age. The learned counsel for the Workmen contended that the superannuation age fixed by the Tribunal does not reflect the social changes that have taken place in the country and has also ignored the judicial trend in that regard. Reliance is placed upon the decision of this Court in G.M. Talang V. Shaw Wallace and Co. Ltd. (1964) 7 SCR 424: (AIR 1964 SC 1886). Therein this Court held that the opinion furnished by the several documents on record clearly showed a consistent trend in the Bombay region to fix the retirement age of clerical and subordinate staff at 60 years. In the course of the judgment, this Court noticed the Report of the Norms Committee in which the following opinion was expressed:**
>
> **" After taking into consideration the views of the earlier Committees and Commissions including those of the**

Second Pay Commission the report of which ahs been released recently, we feel that the retirement age for workmen in all industries should be fixed at 60. Accordingly, the norm for retirement age is fixed at 60."

But it is said that the scope of the judgment was confined only to the Bombay region and it should not be extended to the Poona region. A perusal of the Tribunal's Award shows that it followed the decision given by it in the dispute of Shaw Wallace and Co. Ltd. which was reversed by this Court. That apart, the Tribunal also recognized that the retirement age should be raised from 55 years to 58 years and that even thereafter discretion should be given to the employers to continue the employees or not to do so. This indicates that in the view of the Tribunal, the retirement age in the case of the employees of the industry in question could reasonably be raised beyond 58 years. We do not think it is proper to give a discretion to the Company to raise the age of retirement or not to do so, for, the vesting of such uncontrolled discretion in the employer might lead to manipulation and victimization. We would, therefore, following the trend of judicial opinion, hold that the retirement age of the employees of the Company should be raised to 60 years."

The Hon'ble Supreme Court has held in ***Burmah-Shell O.S. & D.Co. v. Their Workmen and another***, 1970 (1) LLJ 363 that the

general trend so far as Bombay and Delhi areas is concerned is to fix the age of superannuation at 60 years. Their Lordships have held as under:

"As observed by this Court in Dunlop Rubber Company (India), Ltd. V. its workmen and others [1959-II L.L.J. 826 at 827-828]:

"There is no doubt that in the case of an all-India concern it would be advisable to have uniform conditions of service throughout India and if uniform conditions prevail in any such concern, they should not be lightly changed. At the same time it cannot be forgotten that industrial adjudication is based, in this country at least, on what is known as industry-cum-region basis and cases may arise where it may be necessary in following this principle to make charges even where the conditions of service of an all India concern are uniform. Besides, however, desirable uniformity may be in the case of all India concerns, the tribunal cannot abstain from seeing that fair conditions of service prevail in the industry with which it is concerned. If, therefore, any scheme which may be uniformly in force throughout India in the case of an all India concern appears to be unfair and not in accord with the prevailing conditions, in such matters, it would be the duty of the tribunal to make

changes in the scheme to make it fair and bring it into line with the prevailing conditions in such matters, particularly in the region in which the tribunal is functioning….”

It is not the case of the appellant that there is any uniform age of superannuation for its workmen throughout India. The agreements referred to earlier relate only to Bombay and Calcutta areas. It does not appear that there are similar agreements between the management and the workman in other areas. Therefore, the fact that the appellant company is an all India concern has no significance for our present purpose.

In fixing the age of superannuation the most important factor that has to be taken into consideration is the trend in a particular area. That position is made clear by this Court in Talang (G.M.) and others V. Shaw Wallace & Co. Ltd. and another [1964-II LLJ 644]. There is no denying the fact that life expectation has greatly increased in recent years due to healthier living conditions, better food and improved medical facilities though we have still a long way to go in that regard. Under modern conditions, speaking generally, the efficiency of workmen is not impaired till about 60 yeas. The needs of a workman are likely to be greater between the age of 50 to 60 years as during that period he has to educate his children, marry his daughters, in addition to

maintaining his family. If one looks at the word trend it is obvious that the age of superannuation is gradually pushed up. In some countries it is as high as 70 years. The same trend is there in this country and Delhi area is no exception. From the material placed before the tribunal, it is clear that trend is pronounced in Delhi area.

We shall now proceed to examine the facts established in this case bearing in mind the principles discussed above. But it must also be remembered that this Court does not interfere with the award given by a tribunal unless it suffers from some grave error such as ignoring any important factor that bears on the question under consideration.

As we said earlier, in the matter of fixing the age of superannuation the trend in a particular area is the most important factor though in the matter of determining the other conditions of service of workman, the principles of region-cum-industry is by and large the determinative factor.

In Hindustan Times Ltd. V. Their workmen [1963-1 LLJ 108], this Court fixed the age of superannuation of workmen at 58 years. This is the only decision of this Court brought to our notice dealing with the age of superannuation of workmen in the Delhi area. But from the award of the tribunal, it is seen that in as many as 22 concerns in Delhi area, the age of superannuation of

workmen has been fixed either by settlements or by awards at 60 years. In Workmen of Jessop & Co. Ltd. Vs. Jossop & Co. Ltd. [1964-1LLJ 451], a company situate in West Bangal, this Court fixed the age of superannuation at 58 years. Again in Workmen of Balmer Lawrie & Co Ltd. V Balmer Lawrie & Co. Ltd. And another [1964-1 LLJ.380], a company situated in West Bengal, this Court fixed the age of superannuation at 58 years. That judgment was delivered on 7th November, 1963.

From the various decisions rendered by this Court and by the tribunals, it is obvious that the trend is to raise the age of superannuation. It is also clear fro those decisions that so far as Bombay, Calcutta and Delhi areas are concerned, the trend appears to raise the age of superannuation to 60 years.

In fixing the age of superannuation, several circumstances have to be taken into consideration, as observed by this court in Guest, Keen, Williams (Private), Ltd. V. Sterling (P.J.) and others [1959-II LLJ 405]. Speaking for the Court, Gajendragadkar, J. (as he then was), observed therein (at p. 415):

> **"…In fixing the age of superannuation industrial tribunals have to take into account several relevant facts. What is the nature of the work assigned to the employees in the course of their employment? What are the retirement benefits and other amenities available to them? What is the nature of the wage-structure paid to them? What is the**

character of the climate where the employees work and what is the age of superannuation fixed in comparable industries in the same region? What is generally the practice prevailing in the industry in the part in the matter of restricting its employees? These and other relevant facts have to be weighed by the tribunal in every case when it is called upon to fix an age of superannuation in an industrial dispute….."

In the instant case, the tribunal did not find that, as compared with other concerns, the wage-structure in the appellant company is unsatisfactory. Taking into consideration the wage structure in other comparable concerns, the wages paid by the appellant-company must be considered as reasonable. As mentioned earlier, so far as clerical staff is concerned, a pension scheme is in operation in the appellant-concern. The tribunal did not find that that scheme is not a fair one. We have ourselves examined the scheme; compared with the pension scheme prevailing either in the union government, or in the State Governments, that scheme must be considered as a fair one. So far as the other workmen are concerned, there is no pension scheme. Those workmen are no doubt paid some gratuity at the time of their retirement; but that payment is wholly inadequate to meet their obligations during their retired life. We are told that they are paid fifteen months' salary as gratuity. This cannot be considered as an adequate substitute for pension.

The Hon'ble Supreme Court in ***Jeewanlal Limited v. Workmen and another***, 1972 Labour Industrial Cases 654 had held that the present day tendency is to fix the age of superannuation at 60 years unless the Tribunal feels that the work of the operatives is

particularly arduous or hazardous where workmen may lose efficiency earlier.

The Apex Court in ***Workmen of the Bharat Petroleum Corporation Ltd; Bombay v. M/s Bharat Petroleum Coproration Ltd; and another,*** 1984 Lab I.C. 8 had raised the retirement age of clerks in Refinery Division to 60 years. Their Lordships have held as under:

> **"The Tribunal noticed that the age of retirement of the clerical staff of the company in its Marketing Division was 58 years and observed:-**
>
> **"Similarly, it is apparent that the company has fixed the age of retirement of the clerical staff in its Marketing Division, both in Bombay and other places at 58 years. I do not find any valid reason while the concerned workmen should be denied a raise in the age of their retirement at least to the extent of 58 years." So according to the Tribunal, the retirement age of the clerical staff of the Refinery Division had to be increased at least to 58 years, since the retirement age of the clerical staff of the Marketing Division of the Company had been fixed at 58 years. The relevant and outstanding fact which the Tribunal failed to notice here was that the clerical staff of the Marketing Division have a pension scheme while the clerical staff of the Refinery Division have no such scheme. The general terminal benefits on attaining the age of superannuation are pension, gratuity**

and provident fund. It is not in dispute that while the clerical staff of the Marketing Division have all three terminal benefits, the clerical staff of the Refinery Division are not entitled to any pension. This must necessarily have an impact on the raising of their retirement age. Therefore, without travelling outside the very company, we think that the Industrial Tribunal fell into a serious error in failing to notice that there was no pension scheme in the case of clerical staff of the Refinery Division while there was such a scheme in the case of a clerical staff of the Marketing Division. On the material available to us, we think that the retirement age in the case of clerical staff of the Refinery Division should be fixed at 60 years."

The Central Pay Commission was also required to examine the question as to the appropriate age of retirement of Central Government employees. The Commission entrusted the matter to the Institute of Applied Manpower Research (IAMR) for study and report. The Central Pay Commission had discussed the report furnish by IAMR vide para 21.15 in the following manner:

"21.15 IAMR if, we may say so, has examined the question in a scientific manner with collection of statistics of this country and countries abroad. It has even collected the up-to-date Data and in particular from the ILO Report III of the Joint Committee of Public Service (4th Session),

Geneva, 1988. The relevant part of the report may usefully be extracted herewith below:

> **"It is observed that the age of superannuation is 65 yeas in most Western Countries, viz. Australia, Belgium, Finland, France, Greece, Italy, Ireland, Luxembourg, Netherlands, Spain, Sweden, Turkey, U.K. Canada and U.S.A. In Denmark the age of retirement is 67 and in Norway, the retirement age of 70 years is followed in the case of certain categories of employees. In Asian region, the highest age of retirement is 65 years in Japan and Hong Kong; 60 years in China, Pakistan, Philippines; 57 years in Bangladesh; and 55 years in Malaysia, Singapore and Sri Lanka."**

The IAMR has also taken into consideration the new developments in the age of retirement in other countries and collected the following information:

(i) **"Denmark, Switzerland, Portugal, U.K. Australia and Finland are taking measures for greater flexibility in the age of retirement for longer stay of people at work. Israel and Germany are also taking similar measures.**

(ii) **U.S.A; has recently increased the age of retirement from 65 to 67 years. Japan is raising the age of retirement to 65 for both men and women. Costa Rica has already increased the age of retirement to 65 years.**

(iii) In the Republics of Czech and Slovak, it is proposed to increase the age of retirement to 62 years for both men and women, as against the existing 60 years for men and 57 years for women.

(iv) A gradual increase of retirement age to 65 years is being proposed in Italy against 60 years at present.

(v) In Argentina a proposal for raising the retirement age from 60 to 65 is being discussed.

Similarly the IAMR has made a sample survey of the health conditions of about 1183 retired persons by contracting them personally and has compiled the following information:

"A sample survey of persons retired during the last five years (1990-94) was carried out for assessing their activity status, health conditions, opinions, on the age of superannuation, availability of work, leisure time spent, etc. For this purpose, names and addresses of about 5000 retired persons (1000 for each year) was obtained from the Office of Chief Controller of Pensions. In all 1183 retired persons were contacted by mail with Reply-paid facility to furnish information in the questionnaire drawn for the purpose. By the end of July, 365 persons furnished the information. Of course, 166 belonged to the gazetted and the rest i.e. 1999 to non-gazetted categories.

About 50 per cent of the respondents reported that they were either working or were available for work. It was interesting to note that persons in the age group of

62 to 65 (about 9 per cent) had indicated their desire for work. Those employed/self employed, were persons between the ages 60 to 62 years.

Bulk of the retired persons viz. 80 per cent reported "Excellent' to 'Good' health conditions. Another 14 per cent reported 'Fair' health and only 6 per cent reported 'Poor' to 'Indifferent' health. The incidence of poor or indifferent health was found to exist amongst people above 62 years of age. It is seen that health conditions amongst the retired persons were good upto the age of 62 years."

After taking into consideration all the factors as discussed above, the IAMR has made the following recommendations:

(a) The age of superannuation for Central Government employees is recommended at 62 years, uniformly for all categories including school teachers. This age will also be applicable to the employees of Union Territory Administrations and N.C.T. of Delhi.

(b) A higher age of superannuation of 65 years is recommended for scientific and technical research and teaching professionals and Medical research and teaching professionals, Judges, Medical specialists, Computer specialists and other high-tech. professions may also have the age of retirement of 65 years.

Non-technical employees, however, in scientific, technical or research institutions may not qualify for the enhanced retirement age and may retire at the general age of retirement of 62 years.

(c) The age of superannuation of senior officers of Central Police Organizations (CPSs) performing administrative and supervisory nature of duties may be increased to 62 years. No change in retirement age is recommended for the operational personnel in any of the Central Police Organization and the status-quo may be maintained.

(d) The age of superannuation for officers performing administrative and supervisory duties in the Delhi Police may be 62 years at par with Central Government employees etc."

On the basis of the report compiled by the IAMR, the 5th Central Pay Commission has made the following recommendations:

"increase the age of retirement for all Central Government employees (Except those in the Armed Forces and Central Police Organizations) to 60 years."

The Health and Family Welfare Department, Himachal Pradesh has also issued brochure "Health at Glance 2005" whereby the combined life expectancy at birth 1998-2002 was 65.9. The life expectancy of male in State of H.P. as per brochure issued by the H.P. Health and Family Welfare Department is 65.7 and 66.3 for females. These findings based on the statistic data as per brochure

also strengthen the view of the Certifying officer of certifying the age of retirement/superannuation at 60 years.

The upshot of the above discussion is that the respondent No.2 had correctly certified 60 years as the age of retirement/superannuation of the workmen. Certification of age of 60 years of the workman by the Certifying Officer is also in conformity with the judicial pronouncements as cited here-in-above. The conditions of service of the workmen are to be prescribed with sufficient precision. The appellate authority has not taken into consideration the various provisions of law while hearing the appeal. The appellate authority had no jurisdiction to set aside the orders of the Certifying officer in view of section 6 of the Act. The authorities i.e. Certifying Officer as well as Appellate Authority were bound to look into the reasonableness and fairness of the draft proposal. In the present case, the Certifying Officer had looked into this aspect of fairness and reasonableness, but the appellate authority has over looked this aspect of the matter also. There was no settlement as recorded by the appellate authority to the effect that the workman will not raise any dispute with regard to the age of retirement/superannuation. The management cannot be permitted to use absolute discretion unilaterally while fixing the age of retirement merely on the basis of incorporation of age in the appointment letters of the workmen in conflict with the mandatory provisions of law. The age prescribed in Model Standing Orders is 60 years. It is the duty cast upon the statutory authorities to see that

the Standing Orders are in conformity with the Model Standing Orders.

Accordingly the writ petition is allowed. Order passed by the appellate authority dated 5.4.2006 Annexure P-16 is quashed and set aside and the order of Certifying officer dated 29.8.2005 Annexure P-14 is upheld. The petitioner is also held entitled to costs which are quantified at Rs. 11,000/-.

(Rajiv Sharma), Judge

June 22, 2007
Awasthi